Justice of the Peace
and
LOCAL GOVERNMENT REVIEW

ESTABLISHED 1837

[Registered at the General Post Office as a Newspaper]

LONDON:
SATURDAY, AUGUST 9, 1958

Vol. CXXII No. 32 PAGES 509–524

Offices: LITTLE LONDON, CHICHESTER, SUSSEX
Chichester 3637 (Private Branch Exchange).

Showroom and Advertising:
11 & 12 Bell Yard, Temple Bar, W.C.2.
Holborn 6900.

Price 2*s.* 9*d.* (including Reports), 1*s.* 9*d.* (without Reports).

CONTENTS

REPORTS

NOTES OF THE WEEK

Adoption: Consent Unreasonably Withheld

Of no class of case is it truer that each case must be dealt with on its particular facts than those under the Adoption Act, and in consequence only broad principles have been laid down by the decisions of the superior courts. One such principle is that adoption cases must be decided upon grounds differing in some respects from those relating to guardianship and custody. *Hitchcock* v. *W.B.* [1952] 2 All E.R. 119, and another is that a court should require strong reasons for holding that the consent of a parent is unreasonably withheld, *see Re K. (an infant) Rogers* v. *Kuzmicz* [1952] 2 All E.R. 877.

In *Re Adoption Act, 1950* (*The Times*, July 29), the Court of Appeal considered the question whether a mother's consent was unreasonably withheld and allowed the appeal, holding that it was unreasonably withheld.

Jenkins, L.J., in the course of delivering judgment, said that the mere fact that a child would be materially better off if adopted than he could hope to be if he remained the child of his true parents did not suffice in itself to make the withholding of consent unreasonable, but that did not mean that that possible element in a case should be wholly ignored. The essential features of the case said the learned Judge were these: it seemed plain that the mother had no means of support for the child save through the putative father who made it clear throughout the proceedings that for his part he did not want the child; the mother had vacillated to an extraordinary degree throughout the history of the case, and her reasons for her consent or refusal seemed inconsistent with a genuine desire to keep her child for its own sake. After referring to the mother's apparent failure to take responsibility for the child even for a matter of 24 hours the Lord Justice observed that she was present in the Court below and was fully aware of the present appeal but she made no attempt to explain her position or to justify her conduct. This case could be distinguished from the cases cited to the Court, and although no doubt no one of the elements would suffice in itself to justify a conclusion that the mother's consent was unreasonably withheld, nevertheless the accumulative effect was such as to justify the Court on the particular facts in reaching that conclusion and an adoption order should be made.

Proceedings Before Examining Justices

Although examining justices are not obliged to sit in open court they generally do so, and there has always been a strong body of opinion against private hearings. Nevertheless, from time to time uneasiness has been expressed about the effect upon potential jurors of detailed reports in the newspapers concerning the evidence given at the preliminary hearing of a case that excites wide public interest. Since most persons committed for trial reserve their defence, it follows that readers of the reports are presented with only one side of the case and may easily form an opinion adverse to the accused. If they are subsequently members of the jury, can they decide the issues upon nothing but the evidence they hear, without regard to what they have read? Many people think not, and hence came a demand for hearings in private.

The Tucker Committee, charged with the duty of considering the whole question of proceedings before examining justices, has produced a report which has met with a mixed reception. This was only to be expected, but we find it difficult to resist its conclusions as pointing the way to desirable changes.

While not recommending hearings in private, the Committee does recommend restrictions upon press publicity. It is right that the public should, as a general rule, have the right to be present, and that the press should be free to report the name of the accused, and the nature of the charge, and the decision of the justices, but it is suggested that no report of the evidence should appear until either the accused has been discharged or the trial has been brought to an end. Thus the present power of examining justices to sit in private would be replaced by the restrictions on the press, and only, we presume, when a private sitting was deemed indispensable

on the grounds of public security or in the interests of justice, would the justices be entitled to sit in private.

The Jury and Press Reports

We are aware that many of those who have had experience of the criminal courts and if juries hold the opinion that the danger of jurors being influenced by what they have read about proceedings before the examining justices is much exaggerated, and that juries can be trusted to pay due heed to the direction of the Judge to act only on the evidence given before them, disregarding anything else they may have heard or read elsewhere. We do not for one moment doubt the honesty and sense of responsibility of jurors. They will certainly do their best to dismiss from their minds any impressions previously formed and anything read in the newspapers which has not been given in evidence at the trial itself but which was given at the preliminary proceedings. But can they really do this? In a long and complicated case can they really sort out these things, even with the assistance of the Judge? That is the real question.

We very much doubt it. It is rather like the question of the effect upon magistrates of evidence of a statement made by one defendant, which is admissible against him but not against his co-defendant. The magistrates resolve not to be influenced, but in their determination to be upright judges they are apt to lean over backwards in favour of the defendant, who may in the result receive undue advantage. It is unsafe to assume that people can entirely disregard what they have read and heard, however hard they try. That is why we think that what *The Times* has called "half open court" may be the best solution of a troublesome problem.

Black-listed Drunkard

The statute-book still bears testimony of parliamentary vigour directed against excessive inebriation at the time of the turn from the nineteenth century to the twentieth, a time when statistics of convictions for drunkenness reached their peak at about 200,000. Note the Inebriates Act, 1898, ss. 1 and 2, and sch. 1 to that Act, and its application by s. 6 of the Licensing Act, 1902; law which most magistrates' courts have seldom been at pains to remember, or, where they have remembered, have been content to regard as a dead letter.

The habitual drunkard, as defined, was and still is susceptible of special treatment. For instance, where he is convicted on indictment of an offence punishable with imprisonment and the court is satisfied by evidence that the offence was committed under the influence of drink or that drunkenness was a contributing cause of the offence, the court may order him to be detained for not exceeding three years in an inebriate reformatory: again, if such a person is charged with any offence of drunkenness committed after three convictions within the preceding 12 months, he is liable on indictment, or, if he consents to be dealt with summarily, on summary conviction, similarly to be detained in an inebriate reformatory. A *Paterson* footnote tells us that "these provisions are no longer operative as there are now no inebriate reformatories." And there we would be content to leave it, were it not that a remnant of these provisions remains in "The Black List." Where a person is convicted in conditions that an order for his detention in an inebriate reformatory might have been made, notice in prescribed form may be sent to the police, whereupon the police will give appropriate information to licensed persons and secretaries of registered clubs in the police area. It then is an offence for the person black-listed within the next three years to purchase or obtain intoxicating liquor: an offence for which he is liable to a fine of 20*s*. for a first offence, 40*s*. for a subsequent offence. It is also an offence, punishable by a fine of £10, or £20 for a subsequent conviction, for a licence holder or person at a registered club knowingly to sell or supply intoxicating liquor to the black-listed person.

We are reminded of this almost-forgotten law by a short item in a local newspaper circulating in the place where we took our quiet holiday: telling us that a named man ". . . . was summoned for being found drunk and for obtaining intoxicating liquor whilst on the Black List. He failed to appear to answer his bail and the bench issued a warrant for his arrest."

Offensive Weapons

We are indebted to the clerk to the Wallsend-on-Tyne justices for particulars of a case brought under s. 1 of the Prevention of Crimes Act, 1953, which was dismissed but, as stated by the chairman, with reluctance.

Briefly the evidence was to the effect that the defendant, when drunk, was seen outside a house using threatening language and holding an open razor in his hand. Police who had been sent for said that the defendant closed the razor on seeing them approach. All this took place in the street, and he was arrested.

Before the magistrates the defendant denied any intention of using the razor as a weapon and explained his possession of it by saying that he called on his brother and, seeing him shave with the razor, had borrowed it in order to experiment in shaving with a "cut throat" razor, he being used to a safety razor.

Announcing the decision of the bench the chairman said that they must accept the evidence of the defendant and his brother about the razor, and that he was carrying it, with lawful authority and reasonable excuse, from his brother's house. The magistrates were bound by the decision in *R.* v. *Jura* (1954) 118 J.P. 260; [1954] 1 All E.R. 696. That case it will be remembered, decided that the words "lawful authority or reasonable excuse" were identified with the carrying of the weapon not with the manner of its use.

Attendance at Court of Parent

A question has been raised on s. 34 of the Children and Young Persons Act, 1933, which relates to the attendance at the court of the parent of a juvenile brought before the court. Often it is the mother who attends and explains that her husband cannot get away from work, and this may satisfy the court. If, however, the court desires to see the father, it has power to require his attendance unless he has been deprived of the custody of his child by order of a court.

What has been asked is whether, if the father attends, the court can insist on the attendance of the mother. We think it can. Normally the parent who can be required to attend is the one having actual possession and control of the child. In a normal home both parents have possession and control of their children, and this seems to be an instance of the singular including the plural within the meaning of the Interpretation Act. If the mother has been deprived of custody by order of a court, or is living in such circumstances that she cannot be said to have possession and control of the child, then it would appear that the court could not enforce her attendance under s. 34.

The point may not often arise, but it is not without importance, as a court,

mostly a juvenile court, is sometimes anxious to see both parents, and it may be that in the first instance only the father attends.

Letter From the Defendant

Long before the coming into operation of the Magistrates' Courts Act, 1957, magistrates' courts were receiving and considering letters from defendants who did not wish to appear in answer to summonses. These letters were occasionally discourteous to the court or to the police, but little heed was paid to that fact, and most of the letters were reasonable.

Now that the new procedure allows the defendant in certain circumstances to plead guilty by letter he may also submit in his notification mitigating circumstances. What the defendant considers mitigating circumstances may not always appeal to the court as such. In a recent case a man who was summoned for exceeding the speed limit and who pleaded by letter said that new notices had been put up about a speed limit, and he could not, he said, be always looking from side to side for notices. Announcing a fine of £3, the chairman, says a report, observed that it was high because the bench considered the defendant's letter rather impertinent.

If this meant that a heavier fine was imposed because the letter was wanting in courtesy it would be open to criticism as being irrelevant to the matter of the gravity of the offence. People are not punished for that kind of "impertinence" towards a magistrates' court, but we do not put that interpretation on the chairman's remark. Rather does it appear that the bench treated it as showing the defendant's attitude towards the law and the disregard of it. If he considered that he was under no obligation to look out for signs and did not propose to bother much about them, then the bench no doubt regarded the fact as aggravating his offence, far from mitigating it.

The Shame of the States

This is the title of a recent article in the *New York Times* by a member of the United States Senate. He draws attention to the difference in the representation of the urban areas as compared with the rural areas in both the State legislatures and in Congress. Such a difference is of course not peculiar to the United States as in settling the basis of representation in Parliament or local government the size of an area must be considered as well as the population. According to the senator, however, the position in the United States is very serious. The expenditure of State and local government bodies is 30 times more than in 1900, and in the last 10 years the financial demands on local government have doubled. Many cities are short of money. Able and devoted officials are said to be overworked and underpaid. Necessary programmes and services are often abandoned. Far from progressing, most urban communities seem to be hard pressed just to hold their own. The author writes strongly when he refers to the shame of the cities—social and economic. He lists the facilities which they lack because they are short of money. Local authorities have pleaded in vain for help from the federal and the State governments.

Although the majority of the Americans live in the metropolitan areas the rural minority dominates the polls. Those who have the greatest influence spend the least money on public administration. Rarely in electing State legislatures does the urban vote, in effect, count for as much as a rural vote. It is said that the State constitutions are so written that an urban area, no matter how large, cannot win a legislative majority.

In one State, 13,000 rural citizens have as many State senators as four million urban dwellers. In another, a city with one-eighth of the State's population has less than one-sixty-eighth of the representatives in its legislative assembly. There are states where as little as 10 *per cent.* of the people can elect a majority in one house of the legislature. A rural Congressman in one state represents just over 200,000 people but an urban Congressman represents 800,000 people.

The writer argues, therefore, that Congress must give more help to the municipalities. For instance, there is said to be a great shortage of school accommodation which can never be provided if the matter is left to the initiative of each state. There is also great need for more housing in the urban areas by public authorities. But this requires financial help from the State or from Congress. Attempts have been made to get help from Congress but because the urban areas are not adequately represented proposed legislation to help them has been defeated.

As the cities grow and their problems increase, the pressure for reform will increase. The author suggests that perhaps an aroused public, a vigorous press and the force of the democratic tradition will create an irresistible demand for justice to the "second-class citizens" of the city and its suburbs.

It is of course impossible to compare the conditions prevailing in local government in such a vast territory as the United States with this country. There is also the important difference that some of the functions of local government in this country are there the responsibility of the State government. But it can be claimed that in this country the urban communities receive just as much consideration in so far as financial support from central funds is concerned as the rural communities and it is as well we are free of some of the difficulties which seem to prevail in the United States.

Half-way Homes for the Senile

It was suggested at the recent annual conference of the Association of Hospital Management Committees that half-way homes should be established for senile people who do not need the full facilities of a mental hospital (we quote from the *Manchester Guardian*). The suggestion was referred to the executive council for consideration.

There is general agreement that much accommodation in mental hospitals is being wasted because there are so many elderly patients who no longer need the specialized care and treatment, necessarily expensive, which these hospitals provide. This was accepted by the Royal Commission which recommended that local authorities should be responsible for providing residential accommodation for such people. There is a clear need for more residential accommodation of the type now provided by local authorities under the National Assistance Act, for persons suffering from a degree of mental infirmity which is manageable in such a home. Persons of this type are already sometimes in general old people's homes but the Royal Commission thought it might be preferable for some to be in special homes. As one speaker said at the conference "mental hospitals should be regarded as treatment centres for the mentally ill and not as depositing grounds for the senile for whom nothing can be done."

Early legislation has been promised to implement the recommendations of the Royal Commission but if elderly people are brought out of hospital because they need not be there and other elderly people are prevented from going to hospital local authorities will have to incur heavy expenditure in providing new homes. They will naturally expect the Government to give financial help

in this as by so doing they will be lessening the expense of the hospital service while, and this matters most, providing the kind of care and accommodation which is much more suitable for those concerned.

The Wages Bill

On June 20 last, Mr. Graham Page, the member for Crosby who was responsible for the Cheques Act, 1957, made another attempt to secure further alterations of the law, on this occasion in relation to the payment of wages.

He had previously been unsuccessful in getting the agreement of the House to payment of wages by cheque: on this occasion cl. 1 of his Wages Bill would have enabled payment to be made by credit to a bank account specified by the employee. He referred to the Truck Acts which require manual workers to be paid in current coin of this realm, and to the difficulties of defining a manual worker for this purpose. He said: "For example, one can pay a bus conductor his wages by cheque, postal order or money order, yet one cannot so pay a bus driver or bus cleaner. One can pay a train driver in any way one chooses, even in kind or by cheque, but not a bus driver."

In favour of his proposal he claimed that it would abolish the anomalies between manual and non-manual workers, that by encouraging the banking habit it would encourage thrift among employees, that a great saving of time in counting and paying wages in cash would be achieved, that it would reduce the transmission of cash from the bank to the employer's premises and the consequent risk of wage-grab crimes, and that it would reduce the inconvenience to many employees of having to travel some distance to the place where wages are paid, there to queue up at the pay desk and to waste much time in waiting. Wives too, he said, would welcome the change: by having a joint account the wife could draw the shopping money on Friday morning without waiting for her husband to come home with the cash on Friday night.

Those who opposed did not do so without complimenting Mr. Page on the presentation of his Bill and his success in ventilating the matter. They felt, however, that matters of such major importance—as one member put it "This is a Bill to break the Truck Acts"—should be dealt with, if at all, in a Government Bill produced after consultations with the employers' and trade union organizations and a thorough investigation by the Minister of Labour.

Doubts were also expressed about the validity of some of his arguments. For example, although the Bill proposed to allow payment by bank credit only by consent it was felt that this consent might not be always freely given by the employee, particularly in times of considerable unemployment. A joint bank account between husband and wife was also held to involve a serious departure from present practice. Mr. John Hynd said: ". . . it happens to be the case that in this country there are millions of women who do not know how much their menfolk earn, and there may be millions who are not interested in knowing . . . because it happens to be the standard . . . We should be running into serious trouble if we changed all that."

The motion for the Second Reading was withdrawn after the Parliamentary Secretary to the Minister of Labour (Mr. Richard Wood) had undertaken on behalf of the Government to look further into the points raised.

—and the Nos-Nod System

Clause 2 of Mr. Page's Bill was quite unconnected with cheques and bank accounts: it sought to legalize the coinless payment of wages, again in the interest of time saving and safety. The system proposed (nos-nod means, of course, no shillings and no pence) would have confined the payment of wages to bank notes only, the odd shillings and pence being accounted for only at stated intervals or by reference to certain prescribed amounts. The clause was necessary in relation to manual employees because the Truck Acts require that such an employee must be paid his entire wages each time that they fall due.

With the consent of employees a number of systems have been tried out successfully in practice. One is to pay wages to the nearest £, odd money up or down being carried forward to the next pay day. From the workman's point of view this may mean that part of his cash receipts for one week must be refunded in the following week. Another system tried out, notably in some hospitals, is based on a cycle of four weeks whereby weekly payments are made to the nearest 10*s.* below and at the end of each period of four weeks the balance in hand is added to and paid with the wages for that week. Another variant is to pay wages to the nearest 10s. below but with weekly adjustment. Thus a man earning £9 6*s.* 6*d.* would receive £9 in the first week: in the second week if his wages were the same he would receive £9 10*s.* and 3*s.* would be carried forward, this process continuing indefinitely. The second and third schemes have the advantage that the situation can never arise where the employee is called on to repay money received.

The cost of paying wages in cash is heavy, and anything that can be done to cut the time of office staff engaged on the work or reduce the associated disbursements is to be welcomed. Obviously any scheme should only be operated after agreement with employees and suitable variations of detail can be introduced as necessary to make the idea acceptable.

There is great advantage also where employees will consent to payment by bank credit instead of by cheque or cash. Agreement to this method can often be secured: even though the employees affected are not those manual workers whom Mr. Page had in mind in cl. 1 of his Bill.

Poliomyelitis Vaccination

There will be general satisfaction at the recent decision of the Minister of Health to extend, in the near future, the scheme for vaccination against poliomyelitis from the present age of 15 up to 25. It has also been decided to bring in a wider range of hospital staff and their families. A start will be made with third injections for persons already vaccinated with two. Previously the extension of the scheme has been restricted by the amount of vaccine available, including that which is being imported from America. The Ministry have not disclosed whether the extension has been made possible by the production of more vaccine in this country but it is believed that one very large company concerned with the manufacture of drugs and chemical preparations has just erected a large building for the purpose of making polio vaccine for the first time.

Six million five hundred and seventy thousand one hundred and fifty-seven persons, including 5,613,602 children up to 15 years, had been registered for vaccination up to June 30, 1958. Four million four hundred and eighty-one thousand eight hundred and thirty-seven had been vaccinated with two doses and 856,388 with three doses. It is proposed that third injections should generally be offered not less than seven months after the second.

THE MAKING OF AFFILIATION ORDERS AT THE SUIT OF A CUSTODIAN: ANOTHER VIEW

[CONTRIBUTED]

In the preface to his new book *Affiliation Proceedings*, the author (Mr. A. J. Chislett) makes the following comment on the Affiliation Proceedings Act, 1957:

> "The draftsmen have done a splendid job of work in effecting this consolidation. Certain aspects of affiliation law are still unsatisfactory, but those were not the concern of the draftsmen as a consolidating Act cannot make serious changes in the law."

No doubt a number of readers of this journal have already perused that preface and they will have noted with some surprise the observation of the contributor of the article entitled "The making of affiliation orders at the suit of a custodian," at p. 315, *ante*, to the following effect:

> "The Act of 1957 is a consolidating Act and it is therefore presumed to make none but minor alterations in the existing law. It will nevertheless be argued that a change in the law may have been effected by the new Act, possibly by inadvertence."

The conclusion reached by the contributor of that article is indeed startling because he expresses the opinion that the custodian of an illegitimate child (not being the child's mother) can obtain an order in circumstances which preclude the mother, local authorities and the National Assistance Board from obtaining comparable orders. Most remarkable of all, however, is the suggestion that such orders can be made years after the birth of the child. Many readers will probably agree that some time limit should be placed upon proceedings based on an allegation of paternity. Such allegations are easily made and with the passage of time it becomes increasingly difficult for the alleged putative father to defend himself. It is true that Parliament has allowed extensions of time to local authorities and to the National Assistance Board but even they have specified limitations of time (*see* s. 26, Children Act, 1948; s. 44 (2), National Assistance Act, 1948) and few practitioners will hitherto have thought that the custodian of an illegitimate child had power to launch proceedings to establish paternity years after the child's birth.

However, the contributor himself is not entirely clear that the alleged change in the law has been initiated by the Affiliation Proceedings Act, 1957, because he draws attention to the provisions of s. 3 of the Affiliation Orders Act, 1914, and quotes the editor of Lushington's *Law of Affiliation and Bastardy*, 7th edn., in support of the view which he expresses as to the effect of s. 5 (3) of the 1957 Act. It is true that he cites *Halsbury's Laws of England* (3rd edn.) to the contrary effect. He might also have added that further strong opinion to the contrary is to be found in Bromley's *Family Law* at p. 354 while Chislett in his book *Affiliation Proceedings* does not include a custodian (not being a local authority) among the persons who can obtain an order of the type indicated by the contributor. It appears, therefore, from his own argument that it was the 1914 Act rather than the 1957 Act which effected the supposed change in the law.

At this point the observant reader will have noticed that the present contributor has so far avoided the use of the expression "affiliation order." The reason for this will, it is hoped, become clear later. For the present it is suggested that a cheating glance be taken at the side-note to s. 5 of the 1957 Act. The note reads: "Persons entitled to payments under affiliation order" and this brings to mind the fact that Lord Hewart, C.J., in *Colchester* v. *Peck* (1926) 90 J.P. 130 pointed out that an order under s. 4 of the Bastardy Laws Amendment Act, 1872, may deal with two different matters, *viz.* (i) an adjudication of paternity and (ii) an order (which the justices are not required to make) on the putative father for the payment to the mother of a sum of money weekly. The two parts of the order are further described at p. 131 as follows: the essence is the adjudication of paternity, while the accidental part, the payment of money, depends on the discretion of the justices. It was held in that case that an adjudication of paternity could not be revoked by magistrates in petty sessions. This decision was approved in the same year by the Court of Appeal in *R.* v. *Copestake, ex parte Wilkinson* (1926) 90 J.P. 191.

In the light of these decisions it is clear that the expression "affiliation order" may need more consideration than it has so far received.

The expression seems to have been defined in a statute for the first time in s. 7 of the Affiliation Orders Act, 1914. That section reads:

> "In this Act unless the context otherwise requires, the expression 'affiliation order' means an order made under the Bastardy Laws Amendment Act, 1872, or any Act amending the same, adjudging a man to be the putative father of a bastard child and ordering him to pay a sum of money weekly or otherwise to the mother of the bastard child or to any other person who is named in the order."

There is a similar definition in s. 126 of the Magistrates' Courts Act, 1952.

For the purposes of the 1957 Act, however, a very different definition is enacted and it becomes necessary to examine s. 4 (1) and (2) of the Act with care. The section reads:

> "4. (1) On the hearing of a complaint under s. 1 of this Act the court shall hear the evidence of the mother (notwithstanding any consent or admission on the part of the defendant) and such other evidence as she may produce, and shall also hear any evidence tendered by or on behalf of the defendant.
>
> (2) If the evidence of the mother is corroborated in some material particular by other evidence to the court's satisfaction, the court may adjudge the defendant to be the putative father of the child and may also, if it thinks fit in all the circumstances of the case, proceed to make against him an order (referred to in this Act as 'an affiliation order') for the payment by him of
>
> (*a*) a sum of money weekly, not exceeding 30*s.* a week, for the maintenance and education of the child,
>
> (*b*) the expenses incidental to the birth of the child, and
>
> (*c*) if the child has died before the making of the order, the child's funeral expenses.
>
> (3) Where a complaint under s. 1 of this Act is made before or within two months after the birth of the child, any weekly sum ordered to be paid under para. (*a*) of the last foregoing subsection may, if the court thinks fit, be calculated from the date of birth."

It is clear that for the purposes of the 1957 Act the expression "affiliation order" means an order for payment of certain sums of money. It does not include an adjudication of paternity although it is important to observe that no affiliation order can be made unless it is preceded by an adjudication of paternity. Such an adjudication can only be made upon a complaint made in accordance with s. 1 of the Act, that is by a single woman who is with child or has been delivered of an illegitimate child, or by certain local authorities or the National Assistance Board who are expressly authorized to make complaints by special statutes (*e.g.*, s. 26 of the Children Act, 1948). There is nothing at all in s. 5 (3) of the 1957 Act which can be construed as authorizing a custodian of an illegitimate child to apply to magistrates for an adjudication of paternity. All that the subsection does is to allow such a custodian, in a case where a man has already been adjudged to be the putative father of the child in custody, to apply to the magistrates for an order for money payments to be made or varied. The difficulty noted by the contributor at p. 316, *ante*, as to the function of the word "made" as opposed to the word "varied" is now resolved because it is clear from s. 4 (2) and the case of *Colchester* v. *Peck*, *supra*, that on hearing a complaint under s. 1 of the 1957 Act the magistrates may make an adjudication of paternity and also may (not must) proceed, if they think fit in all the circumstances of the case, to make an affiliation order. One can well imagine circumstances in which no affiliation order would be made, *e.g.*, where the putative father was serving a prison sentence. Indeed, a reported example of the making of such an order is to be found at 89 J.P.N. 578. In such a case s. 5 (3) would allow a person who afterwards obtained custody of the child to apply to the magistrates for an order for payments to be made by the putative father to him for the maintenance and education of the child.

It remains to consider the questions of venue and limitations of time in relation to applications under s. 5 (3) of the 1957 Act. With regard to venue s. 44 of the Magistrates' Courts Act, 1952, seems to apply. With regard to limitations of time within which the application must be made s. 5 (3) itself gives power to the custodian to make the application at any time during which the child is in custody; the words "a person . . . who for the time being has the custody of the child" must carry this meaning. It hardly seems necessary to fall back upon the doubtful authority of *Ulverstone Union Guardians* v. *Park* (1889) 53 J.P. 629 for the proposition that the complaint can be made at any time.

As to the evidence to be adduced on the hearing of the application, this will depend on the circumstances of the case but the evidence of the mother and the need for corroboration are clearly not obligatory.

The conclusion of the matter is that far from making any change in the law the Affiliation Proceedings Act, 1957, has resolved a doubt which has existed in the minds of some practitioners since 1914 by making it clear that a custodian (not being the child's mother or a local authority) cannot initiate court proceedings designed to cause a man to be adjudged the putative father of an illegitimate child in his custody although the custodian can obtain an affiliation order if an adjudication of paternity has been made.

Finally, it should be mentioned that by virtue of s. 7 (6) of the 1957 Act the custodian of an illegitimate child (not being a local authority or person to whose care the child is committed by an order under the Children and Young Persons Act, 1933) can exercise the powers given to the mother by that section, that is to say, the custodian may apply to the court for the continuance of payments under an affiliation order in certain cases as, for instance, where the child will be engaged in a course of education or training after attaining 16 years of age. J.S.L.

TRIBUNALS AND INQUIRIES

The Tribunals and Inquiries Bill, noticed at p. 327, *ante*, will when this article appears have passed into law. The main proposal is the appointment by the Lord Chancellor and the Secretary of State for Scotland of an advisory council, whose function will be to keep under continuous review the constitution and working of administrative tribunals. The Minister for Wales will be consulted about Welsh representation on the council. It is hoped to establish the council this year, and it will make general recommendations on the membership of tribunals or on the panel from which members are drawn. The appointment of members of tribunals will continue to be made by Ministers who will, however, consult the council before appointments are made.

Provision is made for the council to be consulted on rules of procedure for tribunals, and for it to make an annual report to be laid before Parliament. The tribunals set up under the National Health Service Act, 1946, the National Health Service Executive Councils, and their local services committees, will be directly supervised by the council to be established under the Bill. This supervision will be limited to the adjudicating functions of these bodies, and will not apply to their executive functions. The appointment and dismissal of their chairman and the dismissal of their members will be entirely within the competence of the Lord Chancellor and the Lord President of the Scottish Court of Session. The Lord Chancellor and Lord President will in future appoint all chairmen of tribunals, unless the latter are chosen by a Minister from a panel of persons appointed by them, and they alone will be able to dismiss these chairmen, while members of tribunals will be dismissed only with their consent. The umpire and deputy-umpire under the National Service Act and the chairman and deputy-chairman of a conscientious objectors' appellate tribunal will be barristers of 10 years' standing.

The Bill will enable the council to consider the recommendations of the Franks Report concerning costs of parties, subpoena, the oath, privilege for witnesses and documents, the conditions of service of chairmen and members, and appeals from tribunals of first instance. The Bill will also provide for appeals on points of law to the High Court, with a further appeal to the Court of Appeal in all cases. The Government has therefore taken serious steps to implement the recommendations of the Franks Committee on Administrative Tribunals, in the matter of supervision of the composition of tribunals and the submission of evidence. Certain discrepancies between the proposals in the report and the Government's action have been noted, but determined efforts have been made in this field The Government have not found it possible to accept at present the recommendation that legal aid should be extended to those who have to appear before administrative tribunals, but in most cases restrictions on legal representation before the tribunals have been abolished.

The administrative reforms initiated by the Government should satisfy some of the bodies which gave evidence to the Franks Committee, *e.g.*, the Royal Institution of Chartered Surveyors, the Federation of British Industries, the County Councils Association, and the Town Planning Institute. Tribute should also be paid to the far-sighted memoranda submitted by the General Council of the Bar and by the Law Society; both of these professional bodies should be well pleased with the Government's action, much of which has been based on their proposals.

The Lord Chancellor, Lord Kilmuir, in moving the second reading of the Tribunals and Inquiries Bill on April 1, 1958, said: "This Bill is the first major instalment of legislative reform on the grounds recommended by the Franks Committee and it gives effect to one of the committee's principal recommendations, that an independent statutory body should be set up to keep under review the constitution and working of tribunals. It will be a sort of watch dog . . . The committee was also concerned with administrative procedures relating to land, and I hope to clear out of existence the defence regulations authorizing the requisition of land by the end of the year." This promise of the abolition of a war-time restriction which has surprisingly outlived the end of the war by 13 years will be welcomed in many quarters. Since the official leadership of the Labour Party denies that the nationalization of the land forms any part of the Party's policy in the foreseeable future, there should be no authoritative opposition to this projected administrative reform. Requisitioning of land could have been a first step towards a disguised nationalization of the land, but the aims of the official Opposition in this respect appear to be limited to the municipalization of rented property.

Lord Silkin, who was Minister of Town and Country Planning in Lord Attlee's first post-war Administration, said in the debate: "I am sorry to see that the recommendation that there should be two separate councils has not been accepted. The method contained in the Bill is more complicated and more cumbersome. The time taken for a prospective developer to receive a decision on appeal is sometimes 18 months and in many cases two years. Many prospective developers would be deterred altogether and something should be done to expedite this process." It seems to be purely a matter of administrative convenience whether there should be separate councils for England and Wales on the one hand and for Scotland on the other hand, as recommended by the Franks Committee; or whether there should be only one council, with a special panel for some Scottish matters, as adumbrated by the Government in the Bill. Certainly something should be attempted to reduce the time taken on appeal, and it is to be hoped that the Government will carefully examine this second point made by Lord Silkin.

Lord Denning, in a characteristically powerful speech, said: "The Bill will do much to redress the balance between the individual and Government departments. In our constitution it will rank as the first chapter in a new Bill of Rights. I think cl. 10 does most to retain our liberties, but this clause will not by itself be enough. So far as the law is concerned, the High Court has no power to interfere with the decision of a tribunal unless it gives its reasons. If this clause is to be effective, there should be an additional one that all tribunals, and those giving judicial decisions, should give reasons. A second chapter is needed in the Bill of Rights, dealing with inquiries; and a third dealing with administration, for such cases as Crichel Down, where there was no tribunal or inquiry." Clause 10 removes certain statutory bars to the supervisory jurisdiction of the High Court of Justice and of the Scottish Court of Session. Lord Denning has made a good point here: obviously the clause could be rendered largely nugatory, if administrative tribunals were not compelled to give reasons for their decisions, nor can one fault the second chapter in the new Bill of Rights postulated by the noble and learned Lord. The third needs more elucidation. How is an outside body to investigate administration when no illegality can be alleged? One of the most unfortunate aspects of the Crichel Down affair was the resignation of the Minister concerned, Sir Thomas Dugdale, from the Ministry of Agriculture and Fisheries. Although this resignation is almost a classic example of the convention of the constitution that Ministers of the Crown, and not civil servants or other subordinates, accept political responsibility for departmental administrative decisions, the general public was left with an uneasy feeling that the real culprits escaped punishment.

The Lord Chancellor, Lord Kilmuir, in replying to the debate, said:

"One of the great challenges of 1958, of the latter half of the 20th century, is to try to keep a balance between the individual and the State—surely it is not beyond the wit of man to see that when infringement takes place the individual will get a fair deal, will get the chance of expressing his objections and will get a chance of showing clearly the loss he has sustained. . . . If I come a little nearer to finding the answer in this Bill, I shall be very content."

These are unexceptionable sentiments but many people (not lawyers only) will wish the Lord Chancellor could have gone further than in the Tribunals and Inquiries Bill. Readers will recall the eloquent, but unsuccessful, plea for a Supreme Court of Administration made to the Franks Committee by Professor R. C. FitzGerald of London University. It is not surprising that the Government has not seen fit to implement this proposal, seeing that it did not find favour in the eyes of the committee. On the other hand, as we have seen, the recommendation that appeal should lie on a point of law from all tribunals has been generally accepted. The Divisional Court of the Queen's Bench Division appears to be the most appropriate forum in existing circumstances, and there will be one further appeal on a point of law, by the leave of the Court. The use of the prerogative orders of *mandamus*, prohibition and *certiorari* in the limited fields in which they are applicable should remain, and it is to be hoped that the *dictum* of the Report that no statute should in future purport to oust these orders will be obeyed. Useful procedural and administrative reforms have been promulgated by the Government, which has however fought shy of introducing a system akin to the French *droit administratif*. The Government has preferred to build upon the well-tested fabric of the English common law and organization of the courts and, although this rather conservative approach may be disappointing in certain quarters, it may well yield positive and beneficial results.

The Tribunals and Inquiries Bill will complete the Government's implementation of certain of the recommendations of the Franks Committee. The administrative action already taken in the field of public inquiries has already been discussed at p. 317, *ante*. The advisory council to be set up soon will have valuable work to perform. It should be borne in mind that the number of tribunals in Britain is estimated to run into thousands, and that there are about 50 different categories. It can therefore be seen that there is plenty of scope for revision of their constitution, although a rigid

uniformity would be undesirable in view of the diversity of subject-matter dealt with by different tribunals.

Indeed, it may ultimately be found that the Tribunals and Inquiries Bill is a more progressive and far-reaching measure than either the Local Government Bill or the Life Peerages Act, both of which have been considered during the present session of Parliament. The Tribunals and Inquiries Bill, coupled with the administrative measures already taken, promises useful reform in the complicated field of administrative law.

CURE HARDER THAN PREVENTION

Our Note of the Week at p. 198, *ante*, dealt with prevention of nuisances from sewage by action taken in advance. We have been asked to say more about the cure, where prevention has not been effective. We have had occasion to point out difficulties: typical Practical Points are P.P. 7 at 115 J.P.N. 578; P.P. 8 at 119 J.P.N. 124, and P.P. 8 at 119 J.P.N. 597. We have had the problem in other forms, both under the nuisance sections and under s. 39 of the Public Health Act, 1936. The facts differ from case to case, and it may be more helpful to discuss the problem without necessarily distinguishing real from imaginary facts.

Suppose houses A and B to be connected by a common drain. A is occupied by a single man, and not much cooking or housework is done. B is occupied by a married couple with children, so that the water closet is constantly used, and cooking and the washing of clothes are continuous. A leak in the common drain, or at the point of discharge from the common drain, is revealed because detergent foam appears which it is thought likely comes from B. But can it be said that the nuisance is caused by any default on the part of the owner of B or the householder at B? Sometimes neither of the occupiers, and neither house-owner, has any control over the common drain, which may be vested in a third person.

On the other hand, the person who owns that drain (if he is found and brought before the court) may say that it is in itself adequate, but that nuisance arises through some defect on other property—for example, it may discharge on the property of yet another person, and this last named person may have done something which hindered the flow of effluent. The foregoing problems may arise under the nuisance sections of the Act of 1936. If action is taken under s. 39, which is a more direct power, there are further problems. Under para. (*a*) in s. 39 (1), can it be said that satisfactory provision has not been made for either A or B?

Probably not, since each has a drain connected as required by s. 37 (3). Can para. (*b*) in s. 39 (1) be applied, on the ground that the common drain is insufficient? This involves finding its owner, which is not always easy: A and B may have been erected and sold by a speculator, who has gone out of business. And when the owner of the drain is found, he may not be the "owner of the building" against whom alone proceedings can be taken under s. 39 (1). Perhaps the most frequent difficulty arising under s. 39 is that it is tied to a "building," while inadequacy in the drainage system cannot be attached to that building in particular.

We have used hitherto the illustration of a pair of houses. The trouble is greater when there are several. Suppose, for example, that the common drain after serving houses A and B passes through the gardens of houses C and D. A broken joint under C's garden is revealed by the appearance of detergent believed to come from B. The connexion from C is below the broken joint; so of course is D's connexion. Which house is without satisfactory provision for drainage? It seems impossible to attack C or D under s. 39. Can the nuisance sections be applied? Although the owner of C presumably owns the section of drain beneath his garden (unless it can be shown to belong to somebody else), subject to an easement enjoyed by the owners of A and B, he is not the person by whose act or default (or even sufferance) the nuisance arises, so that the local authority must, apparently, do the work at their own cost under proviso (*b*) to s. 93.

We conclude with the extreme instance mentioned on our note at p. 198. The owner of premises into which a private sewer passed had stopped its outlet and was in that sense the person by whose act a nuisance had arisen, but on the facts before us he seemed to be within his rights in doing so.

Fifteen houses had been built with the usual drains leading to the private sewer. The houses were then sold to separate occupiers. These purchasers had no reason to inquire about the outfall of the private sewer, which was into a drain on private land, not belonging to the owner of the sewer. How this outfall came to be into existence we are not informed. It seems clear that the owner of the private land had not granted any easement to the owner of the sewer, and time had not run for an easement by prescription. From this private land the effluent passed into an open channel upon the land of a second private owner. This man, who had presumably been content to receive the output of his neighbour's drain, objected when this became, in effect, a sewer serving more than a dozen other properties, and the first private owner thereupon blocked the connexion where the sewer serving the new houses entered his land. The first problem for the local authority was to find the proper defendants for proceedings, under s. 39 or under the nuisance sections of the Public Health Act, 1936. The second problem was to find a remedy which the magistrates could enforce —or, for the matter of that, which the High Court would have enforced if the council had proceeded by injunction. They had before them 16 persons (the 15 owner-occupiers draining into the private sewer, and the land owner on whose land the private sewer had been made to discharge) all equally innocent. *Prima facie*, the culprit was the person who laid the private sewer, and probably still owned it. But beyond this bare ownership he had parted with all interest in the property. He might have been dead, or bankrupt, or undiscoverable—we were not told. And although we have just used the word "culprit" for want of any other short expression, this is likely enough to be a misnomer. The original developer can hardly have entered upon adjoining premises and connected his private sewer with an existing drain, without having an arrangement with the owner of those premises for the reception of the effluent, even though it appears from subsequent events that the arrangement was not such as to preclude the neighbouring owner from stopping the connexion. Further, the local authority and the planning authority seem, from any information in our hands, to have accepted the arrangement without indicating even a doubt about its efficacy. Indeed, we have been told of a case where a district council itself proposed, at an inquiry relating to a housing scheme of its own, to carry its effluent into just

such a private sewer—although it was not clear whether, in that event, the local authority would have been content with an uncertain position about the right of discharge through a drain on an adjoining owner's land. It might, that is to say, have been the local authority's intention to construct a sewer of its own below the existing private sewer, which would have got rid of the particular problem arising in the case previously mentioned.

To return to that case, even if there was a "culprit" who could have been found, it seems doubtful what effective steps could have been taken against him. Our local informant considered that the only effective method of coping with the nuisance would have been to lay about half-a-mile of pipe to take the effluent from the private sewer into an existing public sewer, and apparently this would have had to be done (in the end) at the expense of the ratepayers. Hence the conflict: the local authority thought this too heavy a price to pay for the planning authority's not having stopped development by means of the private sewer at an early stage. We do not say that we endorse their view. It has to be borne in mind that the ratepayers will be obtaining revenue from the bringing into existence of new housing accommodation at the expense of a private developer. Further, the private developer would, so far as the Public Health Acts are concerned, have been entitled to lay out his estate without putting in a sewer for the houses, for those Acts still recognize drainage into cesspools, and indeed the use of earth closets. If the estate had been developed in this way, without waterclosets, or with waterclosets draining into cesspools, the local authority could sooner or later have been compelled under s. 14 of the Public Health Act, 1936, to provide a sewer. The developing owner had done this at least, so that it can be argued that the council would be getting off lightly, in having to lay no more than a length of pipe linking the estate with an existing public sewer, even at some distance. It is this duty under s. 14 which the Minister of Housing and Local Government has stressed, in certain cases where he declined to uphold a refusal of planning permission as recorded in his bulletin of selected appeal decisions published in January, 1957. It is true that, where he has allowed an appeal under the Town and Country Planning Act, 1947, single houses or quite small groups have sometimes been involved. There was then less evident objection to leaving the future to look after itself when the time came to apply s. 14 of the Act of 1936. We were more concerned in our former note with the problem of enforcing a further and better method of disposal by private persons, once a group of several houses has come into existence, owned by different persons.

The planning authority has, in our opinion, power (subject to appeal) to prevent this in advance, and this may sometimes be the better course. The clerk of the rivers board for Kent dealt with one aspect of this problem in a letter at p. 472, *ante*. When such development has taken place, it seems that the local authority will seldom be able to enforce upon private persons the provision of the sewer, or the means of disposal beyond the sewer, which has been omitted in the first place.

WEEKLY NOTES OF CASES

COURT OF APPEAL

(Before Lord Evershed, M.R., Romer and Ormerod, L.JJ.)

Re COLE (*deceased*). WESTMINSTER BANK, LTD., AND ANOTHER *v.* MOORE AND ANOTHER

June 9, 10, July 17, 1958

Charitable Gift—Gift to local authority—"For general benefit and welfare of children" in home kept by local authority.

APPEAL from Harman, J.

The testator, by his will, dated December 24, 1952, specifically devised two freehold houses on trust "to apply the income arising therefrom . . . for the general benefit and general welfare of the children for the time being in S. House . . . as a small token of my appreciation of the work carried on at such house . . . I desire that the superintendent for the time being of S. House should be consulted with a view to ascertaining his view as to the allocation of the before mentioned income." The testator died on April 5, 1955. S. House was a home provided and maintained by the county council pursuant to the Children Act, 1948, s. 15, for the accommodation of children in their care either received under s. 1 of the Act of 1948 or under the Children and Young Persons Act, 1933, ss. 57, 62, 63, 64 (as amended), 66 and 67.

Held: (i) on its true construction, the gift was not for the upkeep of S. House, but was for the general welfare and benefit of the children being there at any time; (ii) (Lord Evershed, M.R., dissenting) the gift was partly for a non-charitable object because it could be used for the provision of television sets, gramophones, records, and the like for children in S. House, which could not be regarded as coming within any conception of charity to be found in the preamble of the Charities Act, 1601, and, therefore, the gift was invalid.

Appeal dismissed.

Counsel: *Denys B. Buckley*, for the East Sussex County Council; *C. Slade*, for the trustees; *Tonge*, for the first defendant.

Solicitors: *Sharpe, Pritchard & Co.*, for clerk to council; *Haslewoods*, for *Philcox & Son*, Seaford.

(Reported by F. Guttman, Esq., Barrister-at-Law.)

CHANCERY DIVISION

(Before Roxburgh, J.)

WESTMINSTER CITY COUNCIL *v.* KING'S COLLEGE, UNIVERSITY OF LONDON

July 2, 3, 16, 1958

Rates—Limitation of rates chargeable—Hereditament occupied for the purposes of a non-profit-making organization—Notice terminating the limitation of rates chargeable—When notice may be given—Rate made for second rating year before end of first year—Rating and Valuation (Miscellaneous Provisions) Act, 1955 (4 *and* 5 *Eliz., c.* 9), *s.* 8 (3).

ADJOURNED SUMMONS.

The city council was the rating authority for the district and the defendants long before April 1, 1956, had been and still were the owners and occupiers of King's College, to which premises (for the most part) the Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 8, applied. The new valuation list for the first year, as defined in s. 8 (2) of that Act, came into force on April 1, 1956, and the defendants were allowed in respect of that year the reliefs provided for by s. 8 (2) (*a*). As from the commencement of the first year of the new list the defendants became entitled in regard to subsequent years to the reliefs provided for by s. 8 (2) (*b*), and before February 1, 1957, it was the statutory duty of the council to consider the rate to be made for the second rating year (April 1, 1957, to March 31, 1958). On March 14, 1957, a resolution was passed at a meeting of the council which approved the actual rate payable for the second rating year. By notice dated March 27, 1957, and served by post on the defendants on March 28, 1957, the council gave notice pursuant to s. 8 (3) of the Act that as from the end of the year ending March 31, 1960, the limitation imposed by s. 8 (2) (*b*) of the amount of rates chargeable in respect of the premises would cease to apply. The defendants disputed the validity of the notice on the ground that it was served before the end of the first year of the new list on March 31, 1957.

Held: the notice under s. 8 (3) served on March 28, 1957, was not premature, but valid.

Counsel: *J. A. Wolfe*, for the council; *W. B. Harris*, for the defendants.

Solicitors: *Allen & Son; Slaughter & May.*

(Reported by R. D. H. Osborne, Esq., Barrister-at-Law.)

COURT OF CRIMINAL APPEAL

(Before Devlin, Donovan and Ashworth, J.J.)

R. v. WICKINS

July 14, 1958

Road Traffic—Driving under influence of drink—Disqualification—Special reasons—Defendant suffering from diabetes, but not aware of it—Effect of drink, enhanced by disease—Road Traffic Act, 1930 (20 *and* 21 *Geo.* 5, *c.* 43), *s.* 15 (2).

APPEAL against sentence.

The appellant pleaded guilty at Bournemouth quarter sessions to driving a motor vehicle when under the influence of drink or drugs. The appellant at the time of the offence was suffering from diabetes, but he was not aware of it, and he consumed a moderate quantity of beer which would not have affected his driving but for the diabetes. The recorder was of opinion that, on the authorities, he was bound to order disqualification, though he considered the case to be one of the least serious from the moral point of view. He fined the appellant and disqualified him from driving for 12 months. The appellant appealed against the order and disqualification.

Held: that there was in the present case a "special reason" directly connected with the offence and satisfying the test laid down in *Whittall* v. *Kirby* (1946) 111 J.P. 1, and that the Court was not inhibited by the decision in *Chapman* v. *O'Hagan* (1949) 113 J.P. 518, from holding that that test had not been satisfied. The Court would, therefore, allow the appeal and quash the order of disqualification.

Counsel: N. R. Blaker, for the appellant; *McLellan*, for the respondent.

Solicitors: *Registrar, Court of Criminal Appeal; Marshall Harvey & Dalton*, Bournemouth.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

CAMBRIDGE PROBATION REPORT

Many annual reports of probation committees and probation officers have naturally referred to the fact that 1957 marked the jubilee of the probation system, and some have gone into some detail about its inception and development. Mr. W. B. Gaskell, senior probation officer for the city and the county of Cambridge, gives some interesting local information about the beginnings of the work. It is within the memory of some that at one time probation by part time officers was paid for by fee per case and Mr. Gaskell states that it is recorded that in 1909 when the local juvenile court was established a serving police sergeant was paid 10s. for each of three cases in which he acted as probation officer. In 1910 the county probation service came into being, and the fees were fixed at 10s. for the first three months supervision in each case with an additional 5s. for each subsequent three monthly period. In 1924 as many as 14 part-time officers were working in the borough. In that year the justices began to call for home surroundings reports, and also to meet regularly to receive progress reports, thus anticipating case committees. In 1927 a full time male officer was appointed. In 1938 the need for a full-time woman officer was felt, and in due course one was appointed for the borough and the county. Today, four full-time officers, including a woman, are hardly enough to cope with the many and varied duties that are assigned to them.

Case loads have been under constant review and officers have found it necessary to recommend early discharge in certain cases in order to concentrate time and energy in the more difficult cases. This is considered preferable to letting satisfactory cases continue with very little supervision, which might seem to make probation a farce.

The number of inquiries about the home surroundings and circumstances of offenders has increased, and the greatest increase has been in respect of inquiries for courts of Assize and quarter sessions. The calendar for the Autumn Assize contained 15 cases and information from the probation officer was required in 11 of them.

Under the heading of "Miscellaneous Inquiries" it is stated that the greatest number was in respect of worried parents requesting how to deal with troublesome children. Mr. Gaskell refers to two cases in particular in which mothers complained that their respective boys were beyond control: one boy was almost five years old, the other "boy" was 37.

COUNTY BOROUGH OF BOOTLE: CHIEF CONSTABLE'S REPORT FOR 1957

The report shows an increase in establishment of three and in actual strength of two over the 1956 figures. On December 31, 1957, the establishment was 151 and the strength 139. There was a substantial increase of 555 days in the number of days lost by sickness, the total being 1,836. The special constabulary with a strength of 81, were well below their establishment of 200, but their help was very much appreciated.

There was a very considerable decrease in the number of prosecutions for drunkenness. The 1957 figure was 84, 75 less than in 1956. "Drunk in charge" cases, however, showed only a very small decrease, from seven to six.

The recorded crimes totalled 1,830, 393 more than in 1956. The detected crimes numbered 837, 371 of which were committed by 337 juveniles. In all 476 persons were prosecuted for the 837 offences. The percentage of detected crime for which juveniles have been responsible has shown a decline in recent years, the percentages for 1954 to 1957, inclusive, being 56·95, 45·91, 46·89 and 44·33 respectively. Offences of breaking and entering, of larcenies of various kinds and of wounding were all more numerous than in 1956. The chief constable repeats the complaint, which one reads so often in these reports, that the public will not do their share in crime prevention by taking ordinary precautions to prevent thefts, although he is able to report some response to suggestions he has made. He emphasizes his willingness to help members of the public with advice on how to make their property more secure and states that he attaches such importance to inquiries of this kind that they are usually dealt with personally by the detective-inspector.

Nine hundred and fifty-nine persons were prosecuted for 1,161 non-indictable offences. Traffic offences totalled 444, compared with 419 in 1956. Dangerous or careless driving cases numbered 123, 23 more than in 1956, and insurance offences increased from 40 to 49.

There was, unfortunately, an increase in the number of accidents from 590 to 716. All accidents are fully investigated to try to determine their causes. The chief constable repeats what we have said from time to time that a little less insistence on one's own rights and a lot more recognition of the rights of others would substantially solve the accident problem. The biggest single cause of accidents was jay-walking by pedestrians, and the next was lack of care by drivers at road junctions, including those where there are traffic lights or other aids to safety. Fifty-eight *per cent.* of children's cycles examined were found to be defective, many being a positive danger to their riders and other road users. Of 138 parents who were written to, to give them the chance to remedy such defects, only four had the courtesy to reply to thank the police for their trouble.

CITY OF PLYMOUTH: CHIEF CONSTABLE'S REPORT FOR 1957

This force, in common with many others, has to report an increase in the number of indictable crimes known to the police. The 1957 figure (3,483) was 203 higher than that for 1956. The chief constable cannot offer any reason for the increase, but it is stated that he and his officers have noticed that many of the criminals between the ages of 20 and 30 who pass through their hands seem to have very little fear of prison. It may be that the modern idea of being kind to the poor prisoner is not proving quite so kind to the law-abiding citizen who suffers from the criminal's activities. The chief constable asks the public to be more ready to notify the police of suspicious or unusual happenings, even if this does involve the possibility of being called as a witness in subsequent court proceedings. It is the duty of the public to help the police and to accept as part of that duty any resulting inconvenience or loss of time. An increase from 146 to 173 in "offences against the person" is partly accounted for by the fact that a man arrested for indecency with males had 40 offences with a number of young boys taken into consideration.

Taking and driving away (228) showed a big increase on the 1956 figure (169). The figures for 1953, 54 and 55 were 96, 131 and 209 respectively. The 1957 figure is the highest ever recorded in Plymouth. It is likely that the number of such offences would not be so great if motor vehicle owners would always lock their vehicles and remove the ignition keys.

There were 24 recruits last year and 20 losses. The net gain of four brought the strength of the force fully up to the authorized establishment of 361, a state of affairs which we rarely have the pleasure of recording.

There was a considerable increase in the number of adults committing non-indictable offences. Traffic offences were mainly responsible for the increase. The figures for 1957 were 2,034 charged or summoned and 1,221 cautioned; for 1956 the corresponding figures were 1,882 and 993, a total increase of 380.

The chief constable is pleased to record a decrease in the number of known juvenile offenders. The totals for 1957 were 380 indictable and 433 non-indictable and for 1956 they were 437 and 468 respectively.

Although fatal and personal injury accidents increased from 1,038 in 1956 to 1,053 in 1957 the decline in the number of schoolchildren injured continued, the figures for the years 1953 to 1957, inclusive, being 269, 260, 257, 246, and 266. It looks as though the concentrated training in schools in road safety is having its effect. To save unnecessary police reporting the police in 1957 took particulars of damage after accidents only if there was an allegation of careless or dangerous driving. As a result the figure for 1957 was 618, 1,070 less than in 1956. a great saving of valuable police time.

COUNTY BOROUGH OF SOUTHEND-ON-SEA: CHIEF CONSTABLE'S REPORT FOR 1957

The force increased its strength, during 1957, by four, to a total of 296, the establishment being 306. The chief constable expresses the opinion that it appears that resignations of men in the early years of their service have decreased considerably and that the number of suitable applicants is increasing. It is to be hoped that these hopeful signs will be noted in other forces as well.

Appreciation is expressed of the services of " the nucleus of special constables who turn out with regularity at busy times of the season when the regular force needs assistance."

For the first time, in 1957, officers were allowed sick absence up to three days without a medical certificate. It is interesting to note that in the chief constable's view this led to a decrease in the total number of sick absences " because it has been found that where an officer is certified sick by a doctor he is almost invariably away for at least a week."

Public relations are reported to be good, and we are pleased to see that at least some members of the public are prepared to take the trouble to write to express their thanks for services rendered by the police. Over 100 such letters were received.

Recorded crimes (2,620) showed a large increase of 448 over 1956. 626 persons were dealt with for the 1,400 (53 *per cent.*) of detected crimes. 362 of these were adults who were dealt with in court, a further 51 being cautioned. The corresponding figures for juveniles were 138 and 75. The chief constable expresses the view that his policy of cautioning juveniles continues to operate satisfactorily. The caution is administered by an officer of inspector's rank, in the presence of a parent or guardian. When circumstances justify it advice is given to the adults responsible for the children. It is claimed that only a very small proportion of juveniles so dealt with came to the notice of police again. Many juveniles probably would find, if they were able to compare this procedure with that in a juvenile court, that there was not, from their point of view, very much difference in the two except that the latter may well take longer. Two thousand, five hundred and eighty persons appeared before the court for non-indictable offences, 800 more than in 1956; 1,917 of them were charged with traffic offences, compared with 1,310 similarly charged in 1956.

MAGISTERIAL LAW IN PRACTICE

Western Mail. June 7, 1958.

WOMAN CHOOSES TRIAL BY JURY

Two married women, Martha Thomas, aged 39, of Tyddyn Houses, The Bryn, Flint, and Iris Megan Hughes, aged 34, of Woodfield Avenue, Flint, were committed for trial to Flintshire quarter sessions at a special magistrates' court at Flint yesterday on a joint charge of stealing articles to the total value of 11s. 3d. from a Flint store on May 9.

Mrs. Thomas said she was prepared for the case to be dealt with by the magistrates, but Mrs. Hughes elected to go for trial, and Mr. C. O. Jones, prosecuting, said that as it was a joint charge if one elected to go for trial both must be committed.

The women were granted legal aid and allowed bail.

Although it is obviously desirable that joint offenders should be tried by the same court if possible, there is no provision of law to prevent one being dealt with summarily and the other on indictment in appropriate cases, unless one of the accused is a corporation.

It is provided in sch. 2 to the Magistrates' Courts Act, 1952, para. 9, that where a corporation is charged jointly with an individual with an offence before a magistrates' court, then:

(*a*) if the offence is not a summary offence, but one that may be tried summarily with the consent of the accused, the court shall not try either of the accused summarily unless each of them consents to be so tried;

(*b*) if the offence is a summary offence, but one for which an accused has the right to claim to be tried by a jury, the court shall not try either of the accused summarily if the other exercises that right.

If one of the joint offenders is a child, s. 21 of the Magistrates' Courts Act, 1952, applies. That section provides that where a person under 14 years old appears or is brought before a magistrates' court on an information charging him with an indictable offence other than homicide, he shall be tried summarily: provided that, if a person under 14 is charged jointly with a person who has attained that age, the court may, if it considers it necessary in the interests of justice, commit them both for trial.

The Western Daily Press. June 3, 1958.

THE PAPER-BOY WHO WALKED IN

14 year old sent to approved school

A 14 years old boy who admitted breaking and entering a house while on a paper round and stealing three parcels of jewellery and a wrist-watch, valued together at £16 10s. was sent to an approved school by magistrates at Bristol juvenile court yesterday.

The boy said in a statement that when he delivered a paper to a house in Redfield, he noticed the front door key had not been removed. He went into the front living-room and picked up the three parcels and a wrist-watch, which were lying on the sideboard. He did not open the parcels until he arrived home, he added.

He continued: " I hid the jewellery up the chimney and took the wrist-watch to an antique shop. The dealer asked for a note from my father, so I went home and wrote one out myself." The dealer gave him £3 for the watch, he said.

" You need proper care and supervision," the chairman of the magistrates told the boy. " We hope you will make a new start and make a success of your life."

In this case the boy apparently got in by opening the door with a key that had been left in the lock .

In cases of burglary or breaking and entering it is a sufficient breaking to open either an outer or an inner door or window which is latched or otherwise fastened, or which without being fastened is completely closed (*R. v. Haines and Harrison* (1821) R. & R. 451; *R.* v. *Robinson and Baccon* (1831) 1 Moody 327; *R.* v. *Hyams and Others* (1836) 7 C. & P. 441; *R.* v. *Jordan and Others* (1836) 7 C. & P. 432). *In R.* v. *Jordan,* Gurney, B., said that if the door was latched and the person who entered got in by raising the latch, that was as much a breaking in law as if he had broken through 20 bars of iron.

It is not a breaking to open wider a door or window which is already partly open (*R.* v. *Smith* (1827) 1 Moody, 178) or to enter through a hole in a cellar window (*R.* v. *Lewis* (1827) 2 C. & P. 628).

In *R.* v. *Russell* (1833) 1 Moody 377, it was held to be a sufficient breaking in to lift up the flap of a cellar usually kept down by its own weight.

There is a breaking by construction of law when entrance is obtained by fraud, or by conspiracy, or threats, although no part of the house is actually broken. It was held in *R.* v. *Cornwall* (1730) 2 Stra. 881, that if a servant conspires with a robber and lets him into the house by night, it is burglary in both.

See Halsbury (3rd edn.) vol. 10, para. 1553.

Liverpool Daily Post. April 26, 1958.

INVITATION TO THE POLICEWOMAN COSTS £20

A 41 year old man, who, it was stated, invited a policewoman on plain clothes duty into his car, telling her he was looking for feminine company, was at Oxford yesterday fined £20 for unlawfully importuning a female for immoral purposes.

The man, Austin Millerd Darlington, agricultural merchant's representative, of Banbury Road, Oxford, pleaded not guilty.

Policewoman M. Charlesworth said she was keeping observation on prostitutes when Darlington approached several times in his car and spoke to her. She arrested him the third time.

The policewoman denied acting in a manner which made Darlington think she was a prostitute.

Darlington, who said he was very happily married, told the court that he had a very pleasant conversation with a charming girl, whom he thought he had seen before in policewoman's uniform.

After a friend had suggested she was a prostitute he decided to find out by mentioning money. He invited her into the car only once, as she said she was waiting for a friend.

Under s. 32 of the Sexual Offences Act, 1956, " it is an offence for a man persistently to solicit or importune in a public place for immoral purposes." " Man " includes " boy " (s. 46) " Immoral purposes " is not defined. The section can clearly be used to prosecute male persons persistently importuning either males or females for immoral purposes.

It is, however, unusual in practice in England to find the section used to deal with male persons importuning females. The Wolfenden Committee say in their report (*Report of the Committee on Homosexual Offences and Prostitution*. Cmd. 247, September, 1957), " A curious difference between English and Scottish practice emerged from our inquiry. In England, the provisions in s. 1 of the Vagrancy Act, 1898, relating to importuning by male persons (now replaced by s. 32 of the Sexual Offences Act, 1956) have been used to deal almost exclusively with males importuning males for the purpose of homosexual relations, though occasionally they are used to deal with males soliciting males for the purpose of heterosexual relations—that is, touting for clients on behalf of prostitutes. In Scotland, however, the corresponding provision (s. 1 of the Immoral Traffic (Scotland) Act, 1902) seems never to have been used in connexion with males importuning males for the purposes of homosexual relations, the authorities apparently taking the view (for which support may be found in the long title of the Act) that the provision was not intended to deal with this type of offence " (para. 117).

Although the accused is liable to six months' imprisonment on summary conviction for an offence under s. 32 of the Sexual Offences Act, 1956 (it is two years on indictment) he cannot claim to be tried on indictment under s. 25 of the Magistrates' Courts Act, 1925 (s. 37 and sch. 2 of the 1956 Act). On that point the Wolfenden Committee said, " As a general rule a person charged in England and Wales with an offence for which he is liable to imprisonment for more than three months may claim to be tried by a jury. Male persons charged with importuning are, however, excluded from the benefit of this rule. We see no reason why a person charged with this offence should not enjoy the general right. On the contrary, we see every reason why he should. Frequently, conviction of this offence has serious consequences quite apart from any punishment which may be imposed. Moreover, behaviour which seems to establish a *prima facie* case of importuning and so leads up to an arrest may occasionally be attributable to innocent causes ; and in cases such as this, where actions are susceptible of different interpretations, it is clearly right that the defendant should be entitled to have the issue put to a jury. We recommend accordingly " (para. 123).

CONFERENCES, MEETINGS, ETC.

WORLD HEALTH ORGANIZATION

The Minister of Labour and National Service (Mr. Ian Macleod) opened in London on May 29 the second stage of the World Health Organization's travelling seminar on occupational health. This was previously in France. Delegates were specialists in industrial health from 21 European countries including Bulgaria, Czechoslovakia, Poland, the U.S.S.R. and Yugoslavia.

The programme of work of the World Health Organization in the field of occupational health is based on two principles: (i) to encourage the participation of public health agencies in protecting the health of industrial workers and (ii) to encourage the organization of general health and medical services for workers in industrial establishments. The object of the seminar was to provide an insight into the practical working of industrial health with a view to improving working conditions and the health of the workers. The organizing body considered that both Great Britain and France present an ideal field for study in view of the high standard of their health organizations.

Amongst those who spoke at private meetings of the seminar were Mrs. Sibyl Horner, C.B.E., H.M. senior medical inspector of factories ; and Dr. A. T. M. Wilson, M.D., chairman of the management committee of the Tavistock Institute for Human Relations. Visits were arranged to various kinds of business and other undertakings including the Farnham Park Rehabilitation Centre, railway medical departments, the London Transport Executive Health Service and the medical centres of certain large industrial undertakings. One of the most interesting visits must have been to a large food manufacturing unit where the delegates saw the use of X-rays in detecting foreign bodies in canned foods and also a system of continuous processing of food with some degree of automation, which is unusual in food manufacturing processes. Hospitals were also visited including the Albert Dock Hospital, London, where the medical staff explained the treatment of the injured dock worker in all its stages from entry into hospital until final discharge back to work.

INSTITUTE OF SOCIAL WELFARE

The Institute of Social Welfare's fifth annual general meeting was held at Leeds recently.

It was stated that an inquiry was initiated to ascertain the need among members for additional facilities to obtain academic qualifications for field work. The replies from centres, however, indicated that while there was a demand the number of persons interested was comparatively small and certainly not such as justify the institute seeking to extend the existing facilities. The committee also had to bear in mind that there may be recommendations on this matter in the report of the working party on social workers which is expected later this year. The committee was anxious that there should be adequate facilities for training and acquiring academic qualifications for all members and to enable the whole field to be surveyed, the chairman of the council has accepted an invitation from the committee to set up an institute working party to submit a comprehensive report and recommendations.

Members were informed that, following negotiations with the Local Government Examinations Board, licentiate members of the council can be recommended by the institute to be allowed to sit for the papers " Social Services " and " Welfare Services " in the final examination of the diploma in municipal administration, without taking the full examination. As members who pass in these subjects do not receive a document from the board acknowledging their success, it had been decided that a suitable certificate will be issued by the institute. The committee regret that more members have not availed themselves of the concession obtained for them after lengthy negotiations with the board.

Mr. Bargh said that he personally hoped that by the end of the current year the working party would have published their report, which would mean that clear guidance might become available as to what lines the institute examinations syllabus should take ; he hoped that the field of study would not be too narrow, as he envisaged something at least equal to the type of training given to people who had received an education at university level.

Mr. Cormie, of Edinburgh, said that the question of the delay in setting up an examinations syllabus had been brought strongly to the notice of the working party, but it should be remembered that the majority of welfare workers carried out their duties in rural areas without university facilities ; he felt " there was something in the wind that would provide training for *all* members of the welfare field, whether or not they lived near a university." The real difficulty in setting up examination qualifications and training facilities was the location of members in relation to facilities for studies.

COMMONWEALTH CHEST CONFERENCE

The Commonwealth Chest Conference held recently in London was attended by representatives from over 50 countries. The speakers came from many parts of the world.

The Duchess of Kent, president of the National Association for the Prevention of Tuberculosis, presided at the inaugural meeting and welcomed the delegates, after she had herself been welcomed by the Duchess of Portland, D.B.E., chairman of the council. The Duchess of Kent said the conference—the fifth of its kind to be held in London since the war—bore a different title from its

predecessors because the British national association had extended the scope of its work so as to include not only tuberculosis but all the diseases of the chest and also diseases of the heart. That change would henceforth be reflected in the alteration of the national association's title to that of the Chest and Heart Association. This did not mean that the association had lost interest in tuberculosis but it did imply that the association now felt that it was imperative to turn at least a part of its attention to diseases of equal or even greater potentialities for evil.

The Secretary of State for the Colonies (Mr. Alan Lennox-Boyd) thought the change of title was a welcome sign that tuberculosis is now no longer the great scourge it was even 10 years ago. But in oversea territories tuberculosis will be a long time dying. He said tuberculosis had been an enemy of mankind for so long that it was hard to realize that the next generation may not have to treat it so seriously.

Another speaker was Mrs. Pandit, High Commissioner for India, who said the number of active cases of tuberculosis in that country varied from seven to 30 per thousand of population. Recognizing that the background to tuberculosis was malnutrition and bad housing, she said the Government of India had given high priority to programmes which will meet the situation and help to prevent preventible disease.

The other chief speaker at the inaugurable meeting was the Minister of Health (Mr. Derek Walker-Smith). He said that those who had fought the disease so long should be proud that advances in recent years had made its further eradication possible. In the 10 years of the National Health Service new cases of tuberculosis had fallen by 38 *per cent.* and deaths by 78 *per cent.* This change was reflected not only in the health of the individual but in the freeing of hospital resources for the treatment of other illnesses. Medical care was only one of the many factors contributing to the position. Others included higher standards of living and better housing.

At the second main session various speakers tried to answer the question "The world anti-tuberculosis campaign, is it succeeding?" Dr. Johannes Holm, of the World Health Organization said in no country had tuberculosis yet been brought under control. He thought it was disappointing that in so many countries the function of the national tuberculosis association was limited to committees at the national level. He was sure it was wrong to create the impression that the tuberculosis problem was solved and that the time had arrived when different tasks might be taken up. He said that in several countries more than half the children aged seven showed a specific reaction indicating that they had been infected.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

INSTITUTE OF CRIMINOLOGY

The Secretary of State for the Home Department, Mr. R. A. Butler, made a statement on the proposal for an institute of criminology. He said that discussions had been proceeding with university authorities and he was also consulting the University Grants Committee. He had now been informed by the Vice-Chancellor of Cambridge University that, provided the necessary funds could be made available, the university would be glad to consider the establishment of an institute of criminology, whose functions would include both teaching and research, as well as facilities for exchange of views and information with those concerned with the practical administration of the law. The nucleus of the institute would be the existing Department of Criminal Science, but it would be developed on a broader basis and steps would be taken to associate all interested Faculties with its management. He had told the Vice-Chancellor that he warmly welcomed the proposal and that he was confident that its fulfilment would make an indispensable contribution to the study of the problems of crime and the treatment of offenders.

INDICTABLE OFFENCES

Mr. J. V. Woollam (West Derby) asked the Secretary of State what was the increase in the volume of crime in 1957 as compared with 1956; and in which age and offence groups was the increase most marked.

Mr. Butler replied that provisional figures for 1957 showed a large increase in the number of indictable offences known to the police. The proportionate increase compared with 1956 was most marked in the groups of offences classified as breaking and entering, receiving, and violence against the person. The following table gives the figures for 1956 and 1957:

	Indictable Offences known to the Police		
	1956	1957	Percentage increase
Larceny	323,561	360,985	11·6
Breaking and entering	85,768	105,042	22·5
Receiving	7,215	8,619	19·5
Frauds and false pretences	23,029	26,235	13·9
Sexual offences	17,103	18,635	9·0
Violence against the person	9,307	10,960	17·8
Others	13,727	15,086	9·9
Total	479,710	545,562	13·7

The number of persons found guilty of indictable offences had increased in all age groups and for both sexes. The proportionate increase was most serious in the age group 17 and under 21, and nearly as high in the age group 14 and under 17 years.

The following table gives an analysis by age groups of the number of persons found guilty of indictable offences in 1956 and 1957:

	Males			Females		
	1956	1957	Percentage increase	1956	1957	Percentage increase
Age 8 and under 14	20,813	23,697	13·9	1,527	1,580	3·5
Age 14 and under 17	15,029	18,149	20·8	1,446	1,681	16·3
Age 17 and under 21	13,425	16,962	26·3	1,757	2,059	17·2
Age 21 and under 30	22,461	24,964	11·1	2,376	2,498	5·1
Age 30 and over	30,226	32,156	6·4	6,814	7,174	5·3
Total	101,954	115,928	13·7	13,920	14,992	7·7

The number of persons convicted of non-indictable offences was 10 *per cent.* greater in 1957 than in 1956. There were increases of 31 *per cent.* in the number of convictions of offences by prostitutes, 18 *per cent.* in the number of persons convicted of malicious damage to property, and 12 *per cent.* in the number of persons convicted of drunkenness.

FREE PARDON

Mr. L. Hale (Oldham, West) asked the Secretary of State whether he would hold a public inquiry into the circumstances in which a young nurse, interviewed in the absence of any legal adviser, confessed to a crime which had never been committed, and was tried, convicted and sentenced for the larceny of jewels which had not been stolen.

Mr. Butler replied that he had decided in the light of facts which had subsequently been brought to his notice that it would be appropriate to recommend the grant of a Free Pardon in that case. He was not aware of any grounds for further action on his part.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

Catching up on back reading, I have just encountered your note at p. 295, *ante*, regarding the administration of the oath to adherents of the Sikh religion.

I have some little experience of the Sikhs, during the war in Burma and since the war while serving at Thames Magistrates' Court, and have met this difficulty frequently in practice. However, there is a very simple solution. A friend, a senior member of the Sikh community in London, assures me that Sikhs regard the New Testament as a book sufficiently holy to take an oath on. Their religion is, as you are doubtless aware, the third most important monotheistic religion of the world, after Christianity and Mohamedanism, and, although not prepared to accept the divinity of Christ, the Sikhs do regard Him as one of the greatest teachers the world has ever seen.

The procedure adopted here—used as recently as the day before yesterday—when a Sikh is offered as a witness is to offer him the New Testament, to tell him what it is and to ask whether, if he takes the oath on that book, he will regard himself as bound to tell the truth. On an affirmative answer being received, the oath is administered in the usual form.

Such a procedure, moreover, appears to comply with the provisions of s. 15 (1) of the Perjury Act, 1911 (quoted in *R.* v. *Pritam Singh*).

Yours faithfully,
J. T. TAYLOR,
Deputy Chief Clerk.

Marlborough Street Magistrates' Court,
21 Great Marlborough Street, W.1.

[Our correspondent is thanked for his interesting and informative letter.—*Ed., J.P. and L.G.R.*]

A GAP IN THE BRIDGE

There was once a Scotsman, of pessimistic outlook and dour aspect. Seated one evening at the bridge-table, he was dealt a hand which, as play progressed, proved to consist of all 13 cards of the trump suit. Receiving the congratulations of his partner, at the end of the game, on his marvellous luck in having held all 13 trumps, he was heard to observe, disconsolately: "Aye, mon, but some o' them were gae sma' ones!"

This little anecdote may have been present to the mind of Mr. Justice Danckwerts who has been trying, in the Chancery Division, a case in which a "British international bridge-player," a journalist and broadcaster on the game, sought an injunction to restrain another writer from publishing the fifth edition of a book on contract bridge, or any other book with a similar title which might suggest that it was written by the plaintiff, or jointly by him and the defendant. Damages were also claimed on the alleged ground that the defendant was trying to "pass off" the edition as the plaintiff's work; or alternatively for alleged injury to the plaintiff's professional reputation by reason of the book's contents. The defendant denied the allegations and counter-claimed damages for breach of contract arising from the plaintiff's alleged failure to supply details of 15 hands from the Great Britain v. U.S.A. bridge contest of 1954–55.

On the merits or the result of the action we do not propose to comment; but the *obiter dicta* of the learned Judge are of considerable interest. According to a report in the Brighton *Evening Argus*, he delivered himself of the following reminiscence:

> "The last time I played bridge was 30 years ago. I played with a High Court Judge, a barrister and his mother—*and I revoked.*"

And he added, defiantly:

> "As they encouraged me to play against my will, I was unmoved by their criticism."

The italicized words in the former observation are perhaps the gist of the matter. Revocation is not, in any of its legal meanings, a remedy peculiar to the Chancery side. In the law of contract (of which, for all we know, contract bridge may be a branch) an offer may be revoked at any time before acceptance; but in order to be operative the revocation must be communicated to the offeree (*Byrne* v. *Van Tienhoven* (1880), 5 C.P.D. 344). On the other hand, provided it comes to the knowledge of the offeree, any act done by the offeror which is inconsistent with an intention to keep the offer open will amount to a revocation (*Dickinson* v. *Dodds* (1876), 2 Ch. D. 463). A lawyer of the eminence of Mr. Justice Danckwerts, even during his early days at the Bar, might be forgiven for taking too legalistic a view of the game.

But, perhaps, in those days it was not contract but auction bridge in which he was engaged. Even so, there is authority, extending as far back as *Payne* v. *Cave* (1789), 3 Term Rep. 148, for the following proposition:

> "A bidder at an auction may revoke his bid at any time before the hammer falls—even if there is a condition that no bidder shall retract his bidding."

In either event, then, the act of revoking cannot be regarded as an impropriety in any sense.

The second part of the learned Judge's observation affords an illustration of habits of mind and conduct which are all too prevalent among bridge-addicts. Who among us has not suffered that painful experience, whether at the club, or on board ship, or, in bad weather, at a holiday hotel, of being forcibly conscripted to take part in a rubber, against our wishes and our better judgment? Which of us has not quailed before the fanatical glare in the eyes of the Three Seasoned Players in Search of a Fourth? The phrase may suggest the title of a play by Pirandello; the reality is much more like the baleful fascination exerted on the Wedding Guest by the Ancient Mariner:

> "He holds him with his glittering eye."

But, however it may appear to the Three Huntsmen, it is a deadly serious matter for the unfortunate Quarry. In vain he protests that he is not much good at the game, that he has not held a hand for years, or even that he scarcely knows the rules. The first and second excuses are swept aside as mere demonstrations of modesty; the last is received with blank incredulity. (Politeness usually prevents the victim from putting forward the most candid and truthful explanation—that bridge bores him stiff.) His will (as the practitioners in the criminal courts would say) is overborne by compulsion; the formalities that surround the Revocation (in another sense) of his Will are as nothing compared to the strictness of the ritual that reigns over the bridge-table—that altar of sacrifice whereat the Three Ministrants offer up the dismembered reputation of the Fourth before, during and after the playing of every hand.

"Why," they will snap, "did you not play your 10 of spades at the sixth round?" "What on earth possessed you to lead diamonds that time?" "Surely you ought to have doubled, when X called 'one club?'" In the face of such an inquisition the wretched conscript had far better be dumb than attempt any sort of justification; the admission that he cannot recollect even having seen a 10 of spades in his hand during the game, that he has not the slightest notion why he chose diamonds rather than any other suite, or that he has never heard of the one-club convention, will evoke nothing but a stream of fierce invective. If he is a sensitive soul, he will be reduced, during the remainder of the evening, to a condition similar to that suggested so horrifically in Coleridge's poem:

> "As one who on a lonely road doth walk in fear and dread;
> And, having once looked round, doth dare no more to turn his head
> Because he knows a frightful fiend doth close behind him tread."

Far better is it to follow the example of the distinguished Judge, and take a completely detached view of the inquest proceedings: "As they encouraged me to play against my will, I was unmoved by their criticism."

What a wealth of comfort for the unwilling *tiro* lies in that sentence! And, if they could only be brought to realize it, what an awful warning, in the italicized words preceding it, for his tormentors!

A.L.P.

NOW TURN TO PAGE 1

If no other time is prescribed, notice of appeal to quarter sessions must be given within 14 days after the decision appealed against. (Magistrates' Courts Act, 1952, s. 84.)

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Criminal Law—*Possession of housebreaking implements by night—Implements found when prisoner searched—Larceny Act,* 1916, s. 28 (2).

At midnight a constable observes a man at the door of a lock-up shop. The man sees the officer and runs away. There is an immediate pursuit, the man is arrested by the constable and taken to the police station. He is there searched and found in possession of housebreaking implements and admits that it had been his intention to break into the shop mentioned.

Has the offence been committed of being found in possession of housebreaking implements by night without lawful excuse, bearing in mind that the man was not arrested for this offence but was in fact found in possession after arrest, *cp.* the case of *R.* v. *Harris* (1925) 89 J.P. 37 ? GOSVIC.

Answer.

We think the man can be charged with being found in possession of housebreaking implements by night without lawful excuse. The facts in *R.* v. *Harris, supra,* were not on all fours with the facts in the present case. The implements there were left in a shelter where the prisoner had been seen, and the series of events straddled the crucial time of 9 *p.m.* In the present case, it seems quite clear that the man was in possession of the implements when arrested and therefore in possession of them "as a free man" to use the expression in *Harris's case.* The fact that the man was not arrested for this offence does not matter as the offence is very often not apparent until a prisoner has been searched, *e.g.,* the common example of a man arrested as a suspected person and, when searched at the station, being found in possession of housebreaking implements.

2.—Land—*Magistrates' courts committee—Compulsory power to acquire easement.*

1. Section 25 (1) of the Justices of the Peace Act, 1949, empowers a county council to provide petty sessional houses but there does not appear to be any compulsory power to do so. Section 1 (1) (*a*) of the Acquisition of Land (Authorization Procedure) Act, 1946, provides for compulsory purchase to apply where a local authority has power to purchase land compulsorily by or under any enactment contained in a public general Act and in force immediately before the commencement of the 1946 Act. Since the 1946 Act came into force statutes have been passed conferring compulsory powers and expressly incorporating the provisions of the 1946 Act, but in the case of the 1949 Act there is no such reference or incorporation.

2. Section 3 of the Local Government Act, 1888, transferred to the county council *inter alia* the following matters formerly dealt with by quarter sessions: lock-up houses, court houses, justices' rooms, police stations. The reference to justices' rooms was deleted as a result of provisions of the 1949 Act, sch. 7, part III. The powers of quarter sessions which were thus carried on were contained in the County Buildings Act, 1826. Most of the powers conferred by the 1926 Act were repealed by the Local Government Act, 1933, s. 307, sch. 2, part IV, where the extent of the repeal is described as "the whole Act except so far as relates to Assize courts, session houses, and Judges lodgings."

3. There seems to be no definition of what was meant by a sessions house in the 1826 Act but if, as it seems, it were to include petty sessional court houses then there would be available compulsory powers by virtue of the Local Government Act, 1933, s. 159, and the 1946 Act.

4. What is now required is an easement, *viz.,* a right of way to a petty sessional court house in this county. *Hill* v. *Midland Railway* (1882) 21 Ch.D. 143 said that there is no power of compulsory purchase for an easement unless the special Act so provides, and under the Land Clauses Acts there is no express power given. Can the easement be aquired or must the whole land be taken ? BOLIN.

Answer.

The decision cited related to entry under s. 85 of the Act of 1845, not directly to acquisition, and the statement was made by Fry, J., in course of a judgment in favour of an aquiring authority. We doubt whether an owner who was unwilling to sell could rely upon the statement in resisting compulsory purchase. Whatever the position under the Act of 1845, the council will proceed under the Local Government Act, 1933: the procedure of the Act of 1845 is applied, but the wide definition of "land" in the Act of 1933 is available.

In 1826 the distinction between petty sessions and quarter sessions was not drawn as it is today, and we see no reason to doubt that the power covers a court house for petty sessions. Upon our view of the Act of 1933, we think the county council can aquire the right of way without the land over which it passes, and if necessary can do so compulsorily.

3.—Landlord and Tenant—*Business premises—On-licence combined with other business.*

Clients of ours own a number of on-licensed premises, two of which are about to be relet. The new tenants propose to carry on, in addition to the licensed trade, in one case a shop and in the other a post office, in each case in part of the premises. Premises with an on-licence are excluded from the Landlord and Tenant Act, 1954, while a shop and a post office by themselves would *prima facie* be within the Act. The Act appears to make no provision for the case of some other business being carried on upon on-licensed premises. In your opinion is the effect of the proposed lettings to bring the whole or part of the premises within the Act, or is the existence of the on-licence sufficient to exclude them, despite the carrying on of another business on the same premises ? We have been unable to find any authority on the point. CANAB.

Answer.

We think the on-licence takes the whole premises out of the Act, even though the tenant carries on another business. We have not found a decision on this point, but base our opinion on the language of the Act and what we suppose to be the reason of the excluding provision.

4.—Magistrates—*Practice and procedure—Civil debt—Judgment summons served—Defendant does not appear—Compelling appearance—Committal in absence.*

The collector of taxes for this district has recently laid a complaint respecting arrears of income tax against a defaulter who resides within the borough.

In due course a judgment summons was issued requiring the defaulter to appear before the magistrates' court on a certain date. The summons was served personally.

The defaulter failed to attend court in response to the summons, neither did he make any communication or admission of the debt to the court or to the collector of taxes.

The procedure applied so far has been the civil debt procedure laid down in the Magistrates' Courts Act, 1952, but it is difficult to say what effective steps can now be taken to enforce payment of the sums involved. It appears from s. 47 of the Magistrates' Courts Act, 1952, that no warrant of apprehension can be issued under that section, in enforcement of a civil debt. My justices are loath to make an order of committal in respect of this debt in the absence of the accused, since it is on general principles undesirable to commit a man to prison in his absence although s. 73 of the Magistrates' Courts Act, 1952, which deals with committal for civil debt does not expressly require the defaulter to be present in court when committed. I should therefore be pleased to have your observations on the following questions:

1. Is it possible to issue a warrant of apprehension for civil debt when the defaulter refuses to attend on summons ?

2. May the justices commit such a defaulter to prison in his absence ? L. PUPILUS.

Answer.

1. As stated in the question the defendant's appearance cannot be enforced by a warrant issued under s. 47. In our view if the complainant satisfies the court that the evidence of the defendant is necessary to enable the complainant, as he must under s. 73, *supra,* to prove the defendant's means, a warrant can be issued against the defendant *as a witness* under s. 77 of the Act of 1952.

2. Yes.

5.—Magistrates—*Service of rate summons—Proof of service.*

I should be very pleased if you could kindly tell me whether or not you agree that the following is a correct statement of the methods by which service of a rate summons may be proved:—

1. Where service is effected under s. 59 (1) of the Rating and

Valuation Act, 1925, (including service by ordinary post), by a certificate under r. 55 (2) of the Magistrates' Courts Rules, 1952.

Apparently, where service is effected under the 1925 Act by ordinary post or " by leaving it at the usual or last known place of abode " of the defendant, it is unnecessary to prove that the summons came to the knowledge of the defendant.

2. Where service is by registered post, or by leaving it for the defendant with some person at his last known or usual place of abode, by a certificate, coupled with proof that the summons came to the knowledge of the defendant (r. 76, Magistrates' Courts Rules, 1952 and 1957).

3. In whatever way service is effected, by proof on oath. A method now rarely, if ever, used.

4. If a summons served by ordinary or registered post is returned to the local authority, undelivered, the latter should, it is assumed, inform the court and apply for the issue of a fresh summons. *See Beer* v. *Davies* [1958] 2 All E.R. 255.

JATORA.

Answer.

1. We agree. We would add that the Act of 1925 does not use the expression " ordinary post."

2. We agree that if the service is based upon r. 76 of the Magistrates' Courts Rules, 1952, it is essential to show that the summons came to the knowledge of the defendant ; but we do not know why, in the case of a rate summons, r. 76 should be invoked. We think that " forwarding by post " in s. 59 of the Act of 1925 includes sending by registered post and that a summons is left at the usual or last known place of abode of the defendant, within the meaning of that section, even though it is left there with some other person.

3. We agree.

4. We think that it is impossible to distinguish, for this purpose, between the service of a summons and that of a notice and that a court must treat a summons sent by post as " not served " if it is proved that the summons was not duly delivered at the address.

6.—Prisons—*Prisoners remanded by magistrates' court for mental report—treatment in prison.*

When the court remands a defendant under s. 26 of the Magistrates' Courts Act, 1952, it seems to me that they make the remand having been satisfied that the offence has been committed by the defendant, but before convicting him. As the defendant is not therefore a convicted person, it would seem that he should be given the various privileges afforded to a person in prison on an ordinary remand, but I know that it is the practice of at least one prison to treat the defendant as a convicted person. In view of the wording of s. 26, I should be very grateful for your opinion as to whether you consider this practice to be correct.

LOVAS.

Answer.

The Prison Rules, 1949, as amended by the Prison Rules, 1952, regulate the treatment of prisoners in prison. Rules 104 to 120 of the former Rules deal with the treatment of what are termed " untried persons " but this expression does *not* by r. 104, as amended by r. 14 of the 1952 Rules, include prisoners remanded under s. 26 (1) of the Criminal Justice Act, 1948, as it then was, now s. 26 (1) of the Magistrates' Courts Act, 1952. Such prisoners rank, therefore, as convicted prisoners.

7.—Probation—*Criminal Justice Act*, 1948, *ss.* 6 *and* 8—*Phraseology.*

I know from my own experience as well as from the frequency with which you are asked to clear up the point in your pages of " Practical Points " that there is continuing confusion of the effects of s. 6 and s. 8 of the Criminal Justice Act of 1948. Would you agree that you could help even more by ceasing to use in your pages and discourage others from using in court the loose terms " breach of probation " and " breach of a probation order," which are nowhere used in the Act ?

The Criminal Justice Act of 1948 uses the term " breach of *requirement* of probation order " and the use of the phrase is clearly restricted to s. 6. As you have often pointed out, s. 8 of the Act deals with methods of dealing with the original offence when a further offence has been proved to a court. It is the use of the word " breach " in connexion with this s. 8 which causes the confusion.

GANAS.

Answer.

We agree with what our correspondant says. We should have agreed the more happily if we had not discovered that we were guilty of using the forbidden phrase in an answer to a P.P. at p. 341, *ante*. If our correspondent will bear with that *lapsus calami*, we suggest that that P.P. is a good example of the confusion still to be found between the two sections, caused largely by the use of the word " breach." Although we do not presume to claim all the credit, we are pleased to note that barbarisms such as " the breach of probation was taken into consideration," and " the probation order was considered " are appearing less and less in reports of cases. We can only hope that the near-barbarism " breach of probation " will gradually disappear also.

8.—Public Health Act, 1936, s. 269—*Licensing of caravans.*

There are a number of caravans in the town which have been in position for periods ranging from four years to 20 years. No action has been taken to secure their removal under the Town and Country Planning Act, 1947, and none can now be taken without the payment of compensation. Is there any reason why the council should not now proceed to require the owners of the land and/or the occupiers of the caravans to seek licences from the council under s. 269, and in the event of default take proceedings under subs. (7) of the section ?

A. SARTOR.

Answer.

In our opinion this can be done.

9.—Road Traffic Acts—*Owner required to give information as to driver of vehicle—What is meant by " by or on behalf of a chief officer of police " ?*

I should esteem your valued opinion regarding the interpretation of the phrase " by or on behalf of a chief officer of police " in the context of s. 113 (3) (*a*) of the Road Traffic Act, 1930. This provides, in relation to certain allegations of motoring offences that " The owner of the vehicle shall give such information as he may be required *by or on behalf of a chief officer of police* to give as to the identity of the driver, etc. etc."

It can be reasoned that, although the phrase is purposely wide in its meaning so as to give a chief officer of police scope to obtain such particulars as may be necessary, irrespective of any considerations which might otherwise prevail, it can also be construed in a much narrower sense, in that a constable who personally requires such information from the owner of a vehicle is, by virtue of his office, a person acting on behalf of the chief officer of police under whom he serves. In such a case it is argued that a person who refuses to give the constable the required information commits an offence.

It is argued to the contrary that the phrase is not meant to be so liberally construed in that the requirement must be discharged by, or with the express authority of, the chief officer of police.

In most forces printed forms are habitually used to request such information on behalf of the chief officer of police. Although these forms are officially signed by officers of varying degrees of responsibility, they are, generally speaking, acting in the discharge of their general duties, and not by virtue of any specific delegation of this particular authority.

This, it might be argued, gives the printed requirement no greater substance than the direct request of any constable in the every-day execution of his duty.

The questions which therefore arise are :

1. Is a constable who requires such particulars in the ordinary course of his duty acting by or on behalf of the chief officer of police ?

2. Where circumstances necessitate the serving of a requirement to furnish particulars, is the use of a suitably worded official form sufficient proof in itself that these particulars are required by or on behalf of the chief officer of police, or should it be capable of proof, if required, that the signatory was duly authorized to sign the form in that behalf ?

J. DOMINE.

Answer.

1. There must be a difference between a provision that information may be required by or on behalf of a chief officer of police and one, such as in s. 40 of the Act of 1930, that a person shall give certain information on being so required by a police constable. We think, therefore, that a constable, as such, has no general right to make a requirement under s. 113 (3). If such a requirement is to be made, it must be after specific consideration of the particular case by the chief officer or by someone to whom he has delegated his authority.

2. We think that, subject to what we have said in 1., the chief officer may make such a requirement, or allow it to be made on his behalf, in whatever manner he thinks appropriate, and that a suitably worded form is sufficient for the purpose. It might be, if the validity of the requirement were challenged in a particular case, that the prosecution would be called upon to prove that it had, in fact, been duly made by or on behalf of the chief officer.